

The Honorable Marsha J. Pechman

CV 02 02380 #00000021

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAMES R. CONROY,

Plaintiff,

No. C02-2380P

vs.

AMENDED COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES FOR
DEPRIVATION OF RIGHTS,
PRIVILEGES AND IMMUNITIES AND
PENDENT CLAIMS (SUPPLEMENTAL
JURISDICTION)

JURY DEMAND

THE CITY OF SEATTLE, a
municipal corporation and the
members of its Police Force,
OFFICERS SCOTT MOSS, JOHN
HAYES, MARK GRINSTEAD,
MARGARET SMITH, JOE
MACCARRONE, BRADLEY JOHNSON,
SUZANNE PARTON, CLAY
STOCKWELL, MARK WORSTMAN, GLEN
MULKEY, JAMES BRAKEBILL, ROLF
TOWNE, DWAYNE PIRAK, JOE
PIOLI, GREG RICE, MATT NESS,
LIEUTENANT MARK MOUNT, and
CAPTAIN MICHAEL SANFORD,

Defendants.

I. JURISDICTION

1.1 Jurisdiction of this claim lies in this court based upon
42 USC §1983 reading as follows:

Civil Action for Deprivation of Rights. Every person
who, under color of any statute, ordinance, regulation,
custom, or usage, of any State or Territory or the

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ORIGINAL

SIDERIUS, LONERGAN & MARTIN, LLP
ATTORNEYS AT LAW
500 UNION STREET
SUITE 847
SEATTLE, WASHINGTON 98101
(206) 624-2800
FAX (206) 624-2805

District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

1.2 This court has original jurisdiction of this action pursuant to 28 USC §1343(a)(3) reading as follows:

Civil Rights and elective franchise. (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;...

1.3 This court also has supplemental jurisdiction of the plaintiff's claims (other than the constitutional claims) pursuant to 28 USC §1367 reading as follows:

(a) Except as provided in subsection (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

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II. VENUE

Venue is proper in this judicial district pursuant to 28 USC §1391(b)(1) because the defendant City of Seattle, a municipal corporation, is located in this judicial district and the individual defendants all reside in this District. Venue is also appropriate in this District under 28 USC §1391 (b)(2) because a substantial part of the events giving rise to this claim occurred within this District.

III. PARTIES

3.1 James R. Conroy, plaintiff is a single person, age 42 and is a citizen of the United States. He is now and always has been a resident of Seattle, King County, Washington.

3.2 City of Seattle is a municipal corporation.

3.3 The individual defendants named in this complaint are officers of the Police Department of the City of Seattle and all are residents in this district.

3.4 Claimant has a mental and emotional handicap and has been treated intermittently by psychiatrists and clinical psychologists. These health care practitioners have prescribed various medications to assist and, when taking his medications on a regular basis, claimant lives and behaves normally as a citizen. When not taking his medication, he will at times behave inappropriately, but at no time during his adult life has he ever behaved violently nor inflicted any physical abuse upon any person. From time to time

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SIDERIUS, LONERGAN & MARTIN, LLP
ATTORNEYS AT LAW
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SEATTLE, WASHINGTON 98101
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FAX (206) 624-2805

his actions may be described as inappropriate, but he is, and has always been, a gentle and a careful person.

IV. FACTS

4.1 On August 9, 2001 claimant was at his home which he owns at his residence address, 2114 - 34th Avenue West, Seattle, Washington 98199. He was alone in the home and had locked himself in. He had written on the front window of the home, "Help me." A report was made by persons unknown to the Seattle Police Department who responded by sending approximately 12 police vehicles and two armored vehicles to the scene. A crowd gathered. Two of claimants siblings were there who knew personally from claimant's history that he was merely behaving inappropriately and that apparently had not regularly taken his medication. A number of the neighbors of claimant, who knew him to be a gentle and kind person, and who also knew of his mental difficulties, were also on the scene. One of claimant's mental health professionals came to the scene and the following occurred:

(a) Claimant's brothers both spoke to the police officer in charge telling him that claimant was not violent and that it would merely be necessary that one or both of them talked to him and whatever difficulty the police perceived would be peacefully resolved. The officer responded, "get out of here--this is a police matter," and told both brothers to leave the area.

(b) The mental health professional who had previously worked with claimant, made the same request to the police, knowing

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1 that claimant was not a violent person and asking merely to speak
2 with the claimant to resolve any problems. The police told the
3 mental professional "get out of here," again asserting that it was
4 a "police matter."

5 (c) After several hours the police requested help from
6 King County Mental Health Crisis and Commitment Services. Mental
7 Health Professionals from that agency arrived at the scene. By
8 that time police patrol officers, hostage negotiators and the
9 Seattle Police Special Weapons and Tactics Team (SWAT) had
10 assembled. Negotiators were attempting to communicate with
11 claimant by means of a bullhorn or amplified speakers. Claimant
12 was not responsive. The mental health professionals advised police
13 officers that there did not exist sufficient evidence for
14 involuntary commitment of claimant pursuant to State law. Police
15 personnel advised the mental health professionals that upon contact
16 with claimant that they would transport him to Harborview Hospital
17 for mental health evaluation regardless of whether or not there
18 existed probable cause.

19 (d) For several hours thereafter police officers
20 attempted to coax claimant from his home. A police armored vehicle
21 was positioned on plaintiff's property immediately outside this
22 front door of his house. SWAT officers and other officers
23 surrounded the premises and pointed weapons in the direction of
24 claimant's residence. A SWAT crisis team consisting of defendants
25 Mulkey, Pirak, Pioli, Rice and Ness positioned themselves
26

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1 approximately 20 feet from plaintiff's front door behind a storage
2 shed. All SWAT officers were equipped with munitions including
3 less lethal munitions. A SWAT tactical plan was developed whereby
4 less lethal munitions would be utilized to prevent claimant from
5 re-entering his residence in the event claimant left his residence
6 and stood on his front porch. As no time was claimant provided
7 warning that weapons would be used against him if he failed to
8 surrender to police.

9 (e) When claimant opened the door and stepped out onto
10 the porch, defendant Dwayne Pirak, one of the SWAT police officers,
11 fired an impact weapon at point blank range, directly into
12 claimant's face, destroying one of his eyes. Defendant Greg Rice
13 fired an electrically charged Taser gun into claimant to render him
14 immobile. Claimant has permanently lost all vision in his eye and
15 for his lifetime will have a prosthetic eye.

16 4.2 Claimant was not violent and at no time in his life had
17 ever been violent. Whatever crime the police suspected the
18 claimant to have committed was not of the severity that justified
19 the unlawful and unconstitutional force used. Claimant did not
20 pose any immediate threat to the police nor to any citizen and was
21 neither resisting or fleeing; the amount of force used by the
22 police in shooting claimant directly in the face at point blank
23 range was not a good faith effort to maintain discipline, but was
24 rather a malicious and sadistic act on the part of the police to
25 harm the plaintiff and was done recklessly and with callous

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1 indifference, all in violation of claimant's constitutional rights
2 under the Fourth and Fourteenth Amendments of the Constitution of
3 the United States and in violation of 42 USC §1983, and the arrest
4 of claimant in this manner constituted an assault and battery and
5 a false arrest.

6 4.3 The Fourth Amendment to the United States Constitution
7 reads as follows:

8 The right of the people to be secure in their persons,
9 houses, papers, and effects, against unreasonable
10 searches and seizures, shall not be violated, and no
11 Warrants shall issue, but upon probable cause, supported
12 by oath or affirmation, and particularly describing the
13 place to be searched, and the persons or things to be
14 seized.

15 4.4 The Fourteenth Amendment to the United States
16 Constitution reads as follows:

17 ...no state shall make or enforce any law which shall
18 abridge the privileges or immunities of citizens of the
19 United States, nor shall any state deprive any person of
20 life, liberty or property, without due process of law; or
21 deny to any person within its jurisdiction the equal
22 protection of the law.

23 4.5 The Fourth Amendment guarantees to every person the right
24 to be free from the use of excessive force by the police and the
25 forces of government. The force used upon plaintiff was
26 intentional or at least with reckless and callous disregard for
27 claimant's constitutional rights, was brutal, unjustified, abusive
28 and offensive to human dignity and out of all proportion to any
conceived threat that the officers violating his rights may have
perceived. The injury to plaintiff James R. Conroy was an

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1 objectively severe physical injury, satisfying the injury element
2 of the civil rights claim under 42 USC §1983.

3 4.6 The Fourteenth Amendment requires probable cause that a
4 criminal offense has been committed prior to an arrest and
5 deprivation of the liberty of the arrested person. There was no
6 probable cause for the arrest and physical abuse committed upon
7 claimant and he was falsely arrested, and intentionally and
8 unjustifiably confined, and his liberty taken from him without due
9 process of law and it constituted a denial of equal protection of
10 the law. The actions of the police constituted an intentional
11 infliction of bodily harm to which plaintiff did not consent.

12 4.7 The conduct of the police officers above described was in
13 violation of the Fourth and Fourteenth Amendments of the United
14 States Constitution and in violation of 42 USC §1983.

15 4.8 The City of Seattle is a municipal corporation within the
16 State of Washington which maintains as its agents and servants of
17 the City of Seattle, the members of the Seattle Police Department.
18 The City of Seattle acted with reckless and callous disregard for
19 the constitutional rights of citizens including the claimant,
20 neither properly supervising nor instructing the police personnel
21 to exercise appropriate restraint and to prohibit absolutely the
22 use of excessive and unreasonable force in effecting an arrest.
23 Further, the policy followed by the Seattle Police Department in
24 reckless disregard of the constitutional rights of the citizens and
25 the claimant followed a policy of permitting and not restraining
26

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1 the police officers from firing guns directly into the face of a
2 citizen who is not posing any threat to the police officers nor to
3 any citizen.

4 4.9 Claimant was hospitalized and, during the period from the
5 date of the incident through September 7, 2001, incurred hospital
6 expense of \$34,517.41 and medical and surgical expenses of
7 \$8,613.41. In addition, the expenses for the prosthetic eye and
8 medical treatment associated therewith exceed \$3,500.

9 **COUNT ONE**

10 **DEPRIVATION OF RIGHTS/COMPENSATORY DAMAGES**

11 Plaintiff has permanently lost the sight in his eye and for
12 the rest of his life will be required to wear a prosthetic eye. He
13 has suffered personal indignity, embarrassment, humiliation,
14 emotional and mental distress, mental anguish, pain and suffering,
15 medical expense for loss of and treatment for his eye injury and
16 replacement with a prosthetic eye and anticipates expense over his
17 lifetime for counseling, psychiatric and psychological assistance
18 superimposed upon a difficult mental health situation which
19 plaintiff was burdened with prior to the incident. Plaintiff has
20 sustained loss of income and loss of earning capacity, all to
21 plaintiff's compensatory damage in the sum of \$1 million for
22 violation of 42 USC §1983 and deprivation of his constitutional
23 rights.

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SIDERIUS, LONERGAN & MARTIN, LLP
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**COUNT TWO
PUNITIVE DAMAGES**

The conduct of the defendants described in Paragraph IV above was malicious and constituted an intentional and/or reckless disregard of plaintiff's civil and constitutional rights. The police operated in a manner that evidenced callous indifference to the rights of plaintiff and the officers acted in bad faith and defendants should be punished and deterred from the type of conduct visited upon the plaintiff and an additional award of punitive damages in the sum of \$1 million is appropriate and demanded by plaintiff.

**COUNT THREE
ATTORNEY'S FEES**

42 USC §1988 provides that in any action or proceeding to enforce a violation of 42 USC §1983 the court, in its discretion, may allow the prevailing party a reasonable attorney's fee and plaintiff requests that at the conclusion of trial, the court, in addition to compensatory and punitive damages award plaintiff a reasonable attorney's fee for the prosecution of this action.

**COUNT FOUR
ASSAULT AND BATTERY**

The conduct of the defendants described in Paragraph IV above constituted an intentional infliction of harmful body contact to which the plaintiff did not consent, causing damage to the plaintiff in the sum of \$1 million as described in Count One for compensatory damage.

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SIDERIUS, LONERGAN & MARTIN, LLP
ATTORNEYS AT LAW
500 UNION STREET
SUITE 847
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**COUNT FIVE
FALSE ARREST, FALSE IMPRISONMENT**

The conduct of the defendants described in Paragraph IV above amounted to an intentional confinement of the plaintiff which was unjustified, amounting to false arrest/false imprisonment to the damage of the plaintiff in the sum of \$1 million as described in Count One for compensatory damages.

**COUNT SIX
TORT OF OUTRAGE**

The conduct of the defendants described in Paragraph IV above was outrageous in character, extreme in degree and beyond all possible bounds of decency. The conduct of the defendants was atrocious and utterly intolerable in a civilized community to the damage of the plaintiff in the sum of \$1 million as alleged in Count One for compensatory damages.

**COUNT SEVEN
NEGLIGENCE**

The conduct of the defendants described herein was negligent in that defendants Pirak, Pioli, Rice, Ness and Mulkey failed to exercise reasonable care under the circumstances resulting in substantial and permanent injury to plaintiff.

Plaintiff demands trial by jury.

WHEREFORE, plaintiff prays for judgment against the defendants and each of them as follows:

1. For \$1 million compensatory damages on Counts One, Four, Five and Six;

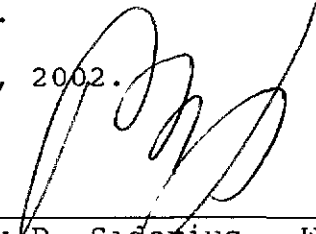
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2. For \$1 million punitive damages on Count Two;

3. That the court award a reasonable attorney's fee as requested in Count Three;

4. For plaintiff's costs and disbursements herein to be taxed and such other and further relief as to the court may seem just and equitable in the premises.

Dated this 28th day of March, 2002.



Frank R. Siderius WSBA 7759
SIDERIUS LONERGAN & MARTIN LLP
Attorneys for Plaintiff

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SIDERIUS, LONERGAN & MARTIN, LLP
ATTORNEYS AT LAW
500 UNION STREET
SUITE 847
SEATTLE, WASHINGTON 98101
(206) 624-2800
FAX (206) 624-2805